

REMARKS

The applicant appreciates the Examiner's thorough examination of the application and requests reexamination and reconsideration of the application in view of the preceding amendments and the following remarks. The applicant also appreciates the Examiner's indication that claims 14-15, 17-20, 34-40, 42 and 45-47 are allowed and claims 3, 6, 8-9, 12-13, 23, 26, 28-29 and 32-33 are allowable.

The Examiner rejects claims 1-15, 17-40 and 42-47 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of co-owned U.S. Patent No. 6,395,010. Applicants herein submit a terminal disclaimer to overcome this rejection.

The Examiner rejects claims 1-13, 21-38, 40, 42-44 and 47 under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,741,260 to Songer et al. in view of U.S. Patent No. 5,476,465 to Preissman.

Claim 1 of the subject application is directed to a crimping system. A crimp tube has an aperture formed along a long axis of the crimp tube for a suture to be located within the aperture of the crimp tube. A set of crimp devices are provided for attachment to first and second portions of the suture. Claim 1 also recites a unique crimping tool. Two arms each have a proximal end and a distal end, the proximal end comprising a handle and the distal end comprising a jaw. A first crimping member is integral with the first jaw and has a first inner surface width. A second crimping member is integral with the second jaw and has a second inner surface width.

The Examiner alleges that:

Songer discloses a crimp tube 36 crimped by a crimping tool having jaws, handles and crimping members with gaps therebetween when closed. A tensioner holds tension on a suture crimped into the lumen of the tube. Two crimp tubes are shown, one being the claimed

crimp tube and the other being one of the set of crimp devices. However a plurality of crimp devices is not disclosed.

It would have been obvious to have provided a set with more than two crimp tubes as it is nothing more than an obvious duplication of known parts, and would allow for the placement of a multitude of crimp tubes along the sternum.

Further, the Examiner is of the opinion that it would have been obvious to have provided a “kit” with multiple cables (more than two) and an equal number of crimp tubes in order to perform a complete procedure where multiple cables are needed. The Examiner further alleges that once multiple cables and crimp tubes are placed in the “kit”, one or two of the tubes could be the claimed crimp tubes and others could be the claimed crimp devices.

However, the applicant submits that Songer does not disclose, teach or suggest providing any such “kit”.

Songer discloses that a single cable is used with a single crimp tube. Nowhere does Songer disclose, teach or suggest that multiple cables and tubes are packaged together and sold as a “kit”. The Examiner appears to rely on Fig. 8 of Songer which shows two cables being used during a surgical procedure to support the proposition that it would be obvious to package such cables and tubes in a “kit”. However, Fig. 8 of Songer only discloses two cables, and one crimp tube associated with each cable. Even if the two cables and crimp tubes were packaged in a “kit” as suggested by the Examiner, the kit would still fail to include a set of crimp devices as claimed by the applicant. Such a “kit” would only include two crimp tubes, while the claimed invention requires three such tubes. Therefore, such a “kit” would fail to include all of the elements of the applicant’s claimed invention.

In surgical operations, devices and instruments used in the surgery are kept sterile to prevent infection of the patient. A “kit” as described by the Examiner would be packaged such

that the components of the “kit” (the cables and crimp tubes) are sterile, and the “kit” would be opened during the surgical procedure for use of the kit components. Any components not used during the surgery would have to be either re-sterilized for future use or disposed of. Thus, packaging extra cables and/or tubes in such a “kit” would be unnecessary and wasteful if the surgical procedure does not require the use of all such cables and crimp tubes.

As Fig. 8 of Songer only discloses the use of two cables, and one crimp tube associated with each crimp tube, including more than two cables and two crimp tubes in a kit would be wasteful and unnecessary. Songer provides no motivation for packaging more than two cables and two crimp tubes together, and as such, any such “kit” would fail to include a set of crimp devices as claimed by the applicant in independent claims 1 and 21.

Accordingly, the applicant submits that independent claims 1 and 21, and their respective dependant claims, are patentable over the cited references.

Independent claims 34 and 47, and their respective dependant claims, are patentable over the references as the references fail to disclose the dimensions of the inner surface widths as claimed by the applicant. These claims were previously allowed by the Examiner.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates collect in Waltham, Massachusetts at (781) 890-5678.

Respectfully submitted,

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